

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JERRY MUSGROVE, and  
MIGUEL STANLEY

Plaintiffs,

V.

DAVID F. UDELL and  
TRIPLE C. EXPRESS, L.L.C.,

Defendants.

Case No.: 1:20-cv-484

## **NOTICE OF REMOVAL**

Defendant David F. Udell, by counsel, and pursuant to 28 U.S.C. §1332, hereby files his Notice of Removal of this matter to the United States District Court for the Southern District of Indiana, Indianapolis Division, from the Shelby Superior Court 1, Shelbyville, Indiana, and, respectfully states as follows:

1. David F. Udell and Triple C. Express, L.L.C., are defendants in a personal injury action now pending in the Shelby Superior Court 1 under Cause No. 73D01-1907-CT-000023.
2. Plaintiffs filed their Complaint in the Shelby Superior Court 1 on July 16, 2019.
3. Defendant David F. Udell, was served with a copy of the Summons and Complaint via Alias Summons-Service by Publication of Suit.
4. Plaintiffs have not effectuated service on Defendant Triple C Express, LLC, and therefore, Triple C Express, LLC's consent is not required as a prerequisite to the removal of this matter.

5. Plaintiffs' Complaint is subject to removal on the grounds of diversity jurisdiction pursuant to 28 U.S.C. §1332.

6. Plaintiff Jerry Musgrove is a citizen of the State of Indiana.

7. Plaintiff Miguel Stanley is a citizen of the State of Indiana.

8. Defendant Triple C. Express, L.L.C., is a two-member Iowa limited liability company with both members of the limited liability company being citizens of Iowa.

9. David F. Udell is a citizen of the State of Ohio.

10. The controversy in this cause of action is entirely between citizens of different states.

11. While Plaintiff's' Complaint seeks an unspecified amount of damages, Plaintiffs seek damages for what they describe as personal injuries, physical pain, suffering, medical expenses, lost wages, future pain and suffering, future expenses, and future lost wages. When served with *Requests for Admission* specifically addressing the amount in controversy, Plaintiffs refused to admit that their alleged damages are less than \$75,000.00. Further, Plaintiffs refused to admit that they would not seek in excess of \$75,000 at the trial of this matter. (See, Exhibit A). In light of the above, the amount in controversy exclusive of interest and costs is greater than \$75,000, the jurisdictional threshold required by 28 U.S.C. §1332(a). See Oshana v. Coca-Cola, Co., 472 F.3d 506, 511-12 (7<sup>th</sup> Cir. 2006)

12. Attached hereto as Exhibit B is a copy of the most current Court Docket, Appearance of Timothy Arthur Rowe for Plaintiffs, Plaintiffs' Complaint,

Summons to David F. Udell, Certificate of Issuance of Summons to David F. Udell, Summons to Triple C Express, L.L.C., Certificate of Issuance of Summons to Triple C Express, L.L.C, Service Returned Not Served by Certified Mail for Triple C Express L.L.C., Service Returned Not Served by Certified Mail for David F. Udell, Alias Summons to Triple C Express L.L.C., Certificate of Issuance of Alias Summons to Triple C Express, L.L.C., Alias Summons – Service by Publication Praecipe of Service by Publication, Alias Summons – Service by Publication Affidavit, Alias Summons – Service by Publication Notice of Suit, Service Returned Not Served by Certified Mail for Triple C Express L.L.C., Affidavit of Publication, Appearance by Attorney in Civil Case of Christopher R. Whitten and Matthew K. Phillips for Defendant David F. Udell, Defendant Motion for Enlargement of Time, Defendant Udell’s Answer, Affirmative Defenses and Demand for Trial by Jury, Order Granting Defendant Motion for Enlargement of Time, Pre-Trial Order and First Class Mail Returned for Triple C Express. These documents constitute all of the pleadings and process on file with the Shelby Superior Court 1, as of the date of this filing of this Notice of Removal.

13. Attached hereto as Exhibit C is a copy of Plaintiff’s Complaint.

14. Upon receiving a file-marked copy of this Notice of Removal, Defendant will serve the same upon Plaintiffs and also file a copy with the Clerk of the Shelby Superior Court 1.

Respectfully submitted,

WHITTEN LAW OFFICE

**s/Christopher R. Whitten**

Christopher R. Whitten/20429-49

Matthew K. Phillips/28724-49

*Counsel for Defendant David F. Udell*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Timothy A. Rowe  
ROWE & HAMILTON  
[trowelaw@aol.com](mailto:trowelaw@aol.com)

**s/Christopher R. Whitten**

Christopher R. Whitten

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